

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED

JAN 18 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 76.51)
of the Commission's Rules)
to Include Anaheim, California)
in the Los Angeles-San Bernardino-)
Corona-Fontana-Riverside, California)
Television Market)

MM Docket No. 93-304

To: Chief, Mass Media Bureau

COMMENTS OF COMMUNITY CABLEVISION COMPANY

Community Cablevision Company ("CCC"),^{1/} a California corporation doing business as Dimension Cable Services ("Dimension"),^{2/} by its attorneys, respectfully requests that the Commission incorporate in the record of this proceeding its Reply Comments, filed today in the Notice of Proposed Rulemaking in MM Docket No. 93-290, DA 93-1349 (rel. Nov. 16, 1993), which are attached hereto. CCC's Reply Comments respond to the Commission's invitation to CCC and others to address issues related to requests for market hyphenation by stations operating in large and complex ADI market areas such as Los Angeles and New York, including the adverse impact of "qualifying" non-local

^{1/} CCC is a wholly-owned subsidiary of Times Mirror Cable Television of Orange County, Inc., a California corporation.

^{2/} Dimension currently serves approximately 42,290 customers in the cities of Newport Beach, Irvine, Tustin, and Orange, the University of California, Irvine, and the Marine Corps Air Stations in Tustin and El Toro, all of which are located in Orange County and within 35 miles of at least one of the designated communities of the Los Angeles-San Bernadino-Corona-Fontana-Riverside hyphenated television market.

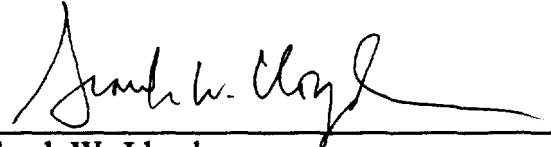
No. of Copies rec'd 19
List A B C D E

stations for must carry rights through hyphenation. See Notice of Proposed Rulemaking in MM Docket No. 93-304, DA 93-1500 (rel. Dec. 21, 1993) at ¶ 8.

Respectfully submitted,

COMMUNITY CABLEVISION COMPANY,
dba Dimension Cable Services

By:



Frank W. Lloyd
Mintz, Levin, Cohn, Ferris,
Glovsky & Popeo, P.C.
701 Pennsylvania Ave., NW
Suite 900
Washington, DC 20004
(202) 434-7300

Its Attorneys

Rose Helen Perez
General Counsel
Times Mirror Cable Television
2381-2391 Morse Avenue
Irvine, California 92714

January 18, 1994

D24293.1

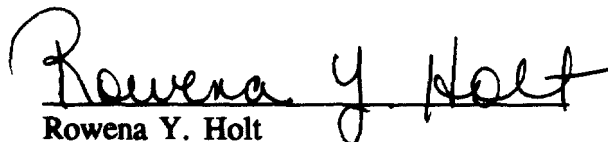
CERTIFICATE OF SERVICE

I, Rowena Y. Holt, do hereby certify that on January 18, 1994, a copy of the foregoing Comments of Community Cablevision Company was delivered, via first class U.S. mail, postage prepaid, to the following:

Richard A. Helmick, Esq.
Cohn & Marks
1333 New Hampshire Avenue, N.W.
Suite 600
Washington, D.C. 20036
Counsel for Golden Orange Broadcasting Co., Inc.

*Alan E. Aronowitz, Esq.
Federal Communications Commission
Mass Media Bureau
Policy and Rules Division
2025 M Street, N.W.
Washington, D.C. 20554

*By Hand


Rowena Y. Holt

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 76.51)	
of the Commission's Rules to Include)	
Newton, New Jersey, and)	MM Docket No. 93-290
Riverhead, New York in the New York,)	
New York - Linden - Paterson - Newark,)	
New Jersey Television Market (#1))	

To: Chief, Mass Media Bureau

REPLY COMMENTS OF COMMUNITY CABLEVISION COMPANY

Community Cablevision Company ("CCC"),^{1/} doing business as Dimension Cable Services, by its attorneys, hereby files reply comments in the above-captioned proceeding.^{2/} CCC is filing these reply comments in response to the Commission's invitation to CCC in the pending Anaheim, California proceeding to address issues related to market hyphenation in large and complex markets like the New York, Boston and Los Angeles markets.^{3/}

^{1/}CCC is a wholly-owned subsidiary of Times Mirror Cable Television of Orange County, Inc., a California corporation.

^{2/}CCC currently serves approximately 42,290 customers in the cities of Newport Beach, Irvine, Tustin, and Orange, the University of California, Irvine, and the Marine Corps Air Stations in Tustin and El Toro, all of which are located in Orange County, California. On May 28, 1993, CCC filed a Petition for Emergency Special Relief with the FCC seeking to exclude a number of broadcast stations, for must carry purposes, from certain communities located within the Los Angeles ADI. That Petition is pending. In re Petition of Community Cablevision Company, dba Dimension Cable Services, CSR-3865-A.

^{3/}Notice of Proposed Rulemaking in MM Docket No. 93-304, DA 93-1500 (rel. Dec. 21, 1993) at ¶ 8.

The petitioning New York ADI stations, like the station in the Anaheim proceeding, seek redesignation primarily as a means of qualifying for must carry status in areas in and around the hyphenated market communities. Redesignation primarily for this purpose is inappropriate, however, as Cablevision Systems Corporation, Time Warner New York City Cable Group, and U.S. Cablevision Corporation demonstrate in their initial comments. Under the 1992 Cable Act, only "qualified" stations are entitled to carriage as must carry stations. A station is not qualified if it is a distant signal for copyright purposes and does not agree to indemnify cable operators for copyright liability. Had Congress intended to relieve broadcast stations of potential copyright liability in order to qualify for must carry status, it could have required wholesale revisions to Section 76.51 of the Commission's rules^{4/} or amended Section 111 of the Copyright Act.^{5/} Rather than doing so, Congress expressed its intent not to work any fundamental changes in the copyright law.^{6/} As commenters in this proceeding have urged, the Commission should not now allow stations to obtain must carry rights (and end-run the statute) through market redesignation, particularly in cases where the stations have demonstrated little, if any, local

^{4/} 47 C.F.R. § 76.51.

^{5/} 17 U.S.C. § 111.

^{6/} See Comments of Cablevision Systems Corporation at 5-7 ("Cablevision Comments"), citing H.R. Rep. No. 628, 102d Cong., 2d Sess. 92 (1992); Comments of Time Warner New York City Cable Group at 7-8 ("Time Warner Comments"); Comments of U.S. Cablevision Corp. at 4 ("U.S. Cablevision Comments").

connection to, or any "competitive commonality" with, the communities already included in the particular market.^{7/}

Further, Commission restraint is particularly warranted given the adverse impact caused by the forced carriage of additional stations in large markets.^{8/} In Orange County, redesignation resulting in stations being deemed "local" for copyright purposes could result in CCC being compelled to add to its system additional television stations without meaningful local ties to the communities served by CCC. Mandated carriage of such stations would further limit CCC's discretion in offering programming of interest to its subscribers and would force CCC's "at capacity" system to drop more desirable programming services. In order to carry additional broadcast stations, CCC has already been forced to reduce to part-time carriage C-SPAN, a local origination channel, The Weather Channel, and VH-1; and has had to completely drop The Movie Channel and Continuous Hits 1.

CCC also supports those commenters urging the Commission to avoid redesignation of large and complex markets like New York and Los Angeles in a way which joins non-local communities (and non-competing stations) in a market, particularly given the fact that market hyphenation significantly expands the geographic area in which stations may assert their network

^{7/}As the commenters in this proceeding have noted, the Commission refrained in its must carry order from making wholesale revisions to Section 76.51, noting that such changes "would have significant implications for copyright liability." See, e.g., Time Warner Comments at 8, U.S. Cablevision Comments at 4, quoting Must Carry Report and Order, 8 FCC Rcd 2965, 2978 (1993).

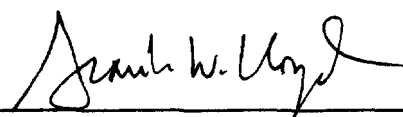
^{8/}See Time Warner Comments at 2.

nonduplication and syndicated exclusivity rights.^{9/} Rather, if the Commission feels that some relief is necessary for any of these stations, it should take less drastic steps that do not create unwarranted and unjustifiable results.^{10/}

Respectfully submitted,

COMMUNITY CABLEVISION COMPANY,
dba Dimension Cable Services

By:


Frank W. Lloyd
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

Rose Helen Perez
General Counsel
Times Mirror Cable Television
2381-2391 Morse Avenue
Irvine, California 92714

January 18, 1994

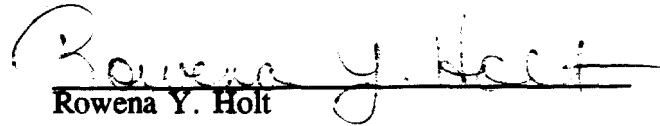
24174.1

^{9/}See Cablevision Comments at 8-9.

^{10/}See, e.g., U.S. Cablevision Comments at 8-9 (suggesting that stations seeking "local" status pursue determinations of significant viewership).

CERTIFICATE OF SERVICE

I, Rowena Y. Holt, do hereby certify that a copy of the foregoing Reply Comments of Community Cablevision Company was served on the following by either hand delivery or first class mail, postage prepaid, this 18th day of January, 1994.


Rowena Y. Holt

*Roy Stewart

Chief, Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 314
Washington, DC 20554

*William H. Johnson

Federal Communications Commission
1919 M Street, N.W., Room 242
Washington, DC 20554

*Ronald Parver

Federal Communications Commission
2033 M Street, N.W., Room 201
Washington, DC 20554

*Alan E. Aronowitz

Federal Communications Commission
2025 M Street, N.W.
Washington, D.C. 20554

Howard J. Braun

Jerold L. Jacobs

Rosenman & Colin

1300 19th Street, N.W., Suite 200
Washington, DC 20036

Attorneys for WLIG-TV, Inc.

M. Anne Swanson

Koteen & Naftalin

1150 Connecticut Avenue, N.W.
Suite 1000

Washington, DC 20036

Attorneys for Mountain Broadcasting
Corporation

John R. Wilner

Bryan Cave

700 Thirteenth Street

Washington, D.C. 20005-3960

Attorneys for Time Warner New York
City Cable Group

John I. Davis

Wiley, Rein & Fielding

1776 K Street, N.W.

Washington, D.C. 20006

Attorneys for U.S. Cablevision
Corporation

Richard R. Zaragoza

Barry H. Gottfried

Fisher, Wayland, Copper and Leader

1255 23rd Street

Suite 800

Washington, D.C. 20037

Attorneys for WTZA-TV Associates
Limited Partnership

John T. Scott, III

Crowell & Moring

1001 Pennsylvania Avenue, N.W.

Washington, D.C. 20004-2595

Attorneys for Bridgeways
Communications Group

Howard J. Symons
Lisa W. Schoenthaler
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Washington, DC 20004
Attorneys for Cablevision
Systems Corporation

*By Hand

D24345.1

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Amendment of Section 76.51)
of the Commission's Rules to Include)
Newton, New Jersey, and)
Riverhead, New York in the New York,)
New York - Linden - Paterson - Newark,)
New Jersey Television Market (#1))

MM Docket No. 93-290

To: Chief, Mass Media Bureau

REPLY COMMENTS OF COMMUNITY CABLEVISION COMPANY

Community Cablevision Company ("CCC"),^{1/} doing business as Dimension Cable Services, by its attorneys, hereby files reply comments in the above-captioned proceeding.^{2/} CCC is filing these reply comments in response to the Commission's invitation to CCC in the pending Anaheim, California proceeding to address issues related to market hyphenation in large and complex markets like the New York, Boston and Los Angeles markets.^{3/}

^{1/}CCC is a wholly-owned subsidiary of Times Mirror Cable Television of Orange County, Inc., a California corporation.

^{2/}CCC currently serves approximately 42,290 customers in the cities of Newport Beach, Irvine, Tustin, and Orange, the University of California, Irvine, and the Marine Corps Air Stations in Tustin and El Toro, all of which are located in Orange County, California. On May 28, 1993, CCC filed a Petition for Emergency Special Relief with the FCC seeking to exclude a number of broadcast stations, for must carry purposes, from certain communities located within the Los Angeles ADI. That Petition is pending. In re Petition of Community Cablevision Company, dba Dimension Cable Services, CSR-3865-A.

^{3/}Notice of Proposed Rulemaking in MM Docket No. 93-304, DA 93-1500 (rel. Dec. 21, 1993) at ¶ 8.

The petitioning New York ADI stations, like the station in the Anaheim proceeding, seek redesignation primarily as a means of qualifying for must carry status in areas in and around the hyphenated market communities. Redesignation primarily for this purpose is inappropriate, however, as Cablevision Systems Corporation, Time Warner New York City Cable Group, and U.S. Cablevision Corporation demonstrate in their initial comments. Under the 1992 Cable Act, only "qualified" stations are entitled to carriage as must carry stations. A station is not qualified if it is a distant signal for copyright purposes and does not agree to indemnify cable operators for copyright liability. Had Congress intended to relieve broadcast stations of potential copyright liability in order to qualify for must carry status, it could have required wholesale revisions to Section 76.51 of the Commission's rules^{4/} or amended Section 111 of the Copyright Act.^{5/} Rather than doing so, Congress expressed its intent not to work any fundamental changes in the copyright law.^{6/} As commenters in this proceeding have urged, the Commission should not now allow stations to obtain must carry rights (and end-run the statute) through market redesignation, particularly in cases where the stations have demonstrated little, if any, local

^{4/}47 C.F.R. § 76.51.

^{5/}17 U.S.C. § 111.

^{6/}See Comments of Cablevision Systems Corporation at 5-7 ("Cablevision Comments"), citing H.R. Rep. No. 628, 102d Cong., 2d Sess. 92 (1992); Comments of Time Warner New York City Cable Group at 7-8 ("Time Warner Comments"); Comments of U.S. Cablevision Corp. at 4 ("U.S. Cablevision Comments").

connection to, or any "competitive commonality" with, the communities already included in the particular market.^{7/}

Further, Commission restraint is particularly warranted given the adverse impact caused by the forced carriage of additional stations in large markets.^{8/} In Orange County, redesignation resulting in stations being deemed "local" for copyright purposes could result in CCC being compelled to add to its system additional television stations without meaningful local ties to the communities served by CCC. Mandated carriage of such stations would further limit CCC's discretion in offering programming of interest to its subscribers and would force CCC's "at capacity" system to drop more desirable programming services. In order to carry additional broadcast stations, CCC has already been forced to reduce to part-time carriage C-SPAN, a local origination channel, The Weather Channel, and VH-1; and has had to completely drop The Movie Channel and Continuous Hits 1.

CCC also supports those commenters urging the Commission to avoid redesignation of large and complex markets like New York and Los Angeles in a way which joins non-local communities (and non-competing stations) in a market, particularly given the fact that market hyphenation significantly expands the geographic area in which stations may assert their network

^{7/}As the commenters in this proceeding have noted, the Commission refrained in its must carry order from making wholesale revisions to Section 76.51, noting that such changes "would have significant implications for copyright liability." See, e.g., Time Warner Comments at 8, U.S. Cablevision Comments at 4, quoting Must Carry Report and Order, 8 FCC Rcd 2965, 2978 (1993).

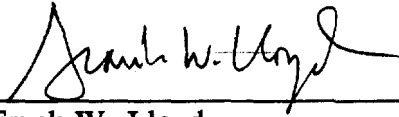
^{8/}See Time Warner Comments at 2.

nonduplication and syndicated exclusivity rights.^{9/} Rather, if the Commission feels that some relief is necessary for any of these stations, it should take less drastic steps that do not create unwarranted and unjustifiable results.^{10/}

Respectfully submitted,

COMMUNITY CABLEVISION COMPANY,
dba Dimension Cable Services

By:


Frank W. Lloyd
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

Rose Helen Perez
General Counsel
Times Mirror Cable Television
2381-2391 Morse Avenue
Irvine, California 92714

January 18, 1994

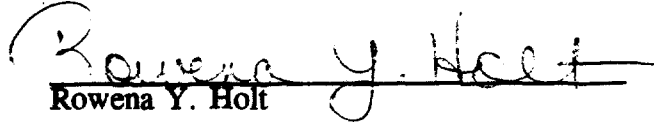
24174.1

^{9/}See Cablevision Comments at 8-9.

^{10/}See, e.g., U.S. Cablevision Comments at 8-9 (suggesting that stations seeking "local" status pursue determinations of significant viewership).

CERTIFICATE OF SERVICE

I, Rowena Y. Holt, do hereby certify that a copy of the foregoing Reply Comments of Community Cablevision Company was served on the following by either hand delivery or first class mail, postage prepaid, this 18th day of January, 1994.


Rowena Y. Holt

***Roy Stewart**

Chief, Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W., Room 314
Washington, DC 20554

***William H. Johnson**

Federal Communications Commission
1919 M Street, N.W., Room 242
Washington, DC 20554

***Ronald Parver**

Federal Communications Commission
2033 M Street, N.W., Room 201
Washington, DC 20554

***Alan E. Aronowitz**

Federal Communications Commission
2025 M Street, N.W.
Washington, D.C. 20554

Howard J. Braun

Jerold L. Jacobs

Rosenman & Colin

1300 19th Street, N.W., Suite 200

Washington, DC 20036

Attorneys for WLIG-TV, Inc.

M. Anne Swanson

Koteen & Naftalin

1150 Connecticut Avenue, N.W.

Suite 1000

Washington, DC 20036

Attorneys for Mountain Broadcasting
Corporation

John R. Wilner

Bryan Cave

700 Thirteenth Street

Washington, D.C. 20005-3960

Attorneys for Time Warner New York
City Cable Group

John I. Davis

Wiley, Rein & Fielding

1776 K Street, N.W.

Washington, D.C. 20006

Attorneys for U.S. Cablevision
Corporation

Richard R. Zaragoza

Barry H. Gottfried

Fisher, Wayland, Copper and Leader

1255 23rd Street

Suite 800

Washington, D.C. 20037

Attorneys for WTZA-TV Associates
Limited Partnership

John T. Scott, III

Crowell & Moring

1001 Pennsylvania Avenue, N.W.

Washington, D.C. 20004-2595

Attorneys for Bridgeways
Communications Group

Howard J. Symons
Lisa W. Schoenthaler
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Washington, DC 20004
Attorneys for Cablevision
Systems Corporation

*By Hand

D24345.1